

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BILLY R. HUNT AND ANN HUNT,
Plaintiffs

V.

NO. 1:94CV125-B-D

PHELPS DODGE INDUSTRIES, INC. AND
SOUTHERN PACIFIC TRANSPORTATION CO.,
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motion of defendant Southern Pacific Transportation Co. for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

INTRODUCTION

Plaintiff Billy R. Hunt ("Hunt") received bodily injury while unloading coils of copper rod from a boxcar at his place of employment. The boxcar had been loaded by defendant Phelps Dodge Industries, Inc. ("Phelps Dodge"), which then contracted with defendant Southern Pacific Transportation Co. ("Southern Pacific") for the delivery of the boxcar from El Paso, Texas to Starkville, Mississippi. The plaintiffs allege that Phelps Dodge was negligent in loading the copper coils onto the boxcar, and that Southern Pacific negligently supervised the loading of the boxcar, negligently inspected the subject car after it had been loaded, and negligently failed to determine the dangerous condition of the load it was transporting. The plaintiffs seek compensatory damages for

the injuries to Billy R. Hunt, as well as for the loss of consortium sustained by the plaintiff Ann Hunt.

FACTS

Southern Pacific owned railcar SSW21592 (hereinafter "the boxcar"). This particular boxcar was equipped with tracks in its walls which allowed the shipper to place cross-braces in the boxcar to secure the load. The Association of American Railroad (AAR) guidelines required that, in securing the load, at least one heavy-duty cross-brace be used for every 6000 pounds.

Phelps Dodge contracted with Southern Pacific to deliver a load of coiled copper rod from its plant in El Paso, Texas to the Hi-Tech plant in Starkville, Mississippi. Phelps Dodge obtained the boxcar from Southern Pacific and loaded it with over 180,000 pounds of coiled copper rods. According to the AAR guidelines, at least thirty-two heavy-duty cross-braces should have been used to secure the copper coils (even more if medium- or light-duty braces were used). Phelps Dodge used only sixteen cross-braces. After loading the copper coils, Phelps Dodge sealed the boxcar and turned it over to Southern Pacific for delivery to Starkville, Mississippi.

Upon receipt of the loaded boxcar, Southern Pacific inspected the car and found nothing unusual. Southern Pacific did not attempt to break the seal and inspect the inside of the boxcar.

Southern Pacific transported the boxcar to New Orleans, Louisiana, whereupon it transferred the car to Norfolk Southern Railroad. Norfolk Southern shipped the boxcar to Meridian, Mississippi and from there the Gulf and Mississippi Railroad transported the boxcar to the Hi-Tech plant in Starkville, Mississippi, arriving on or about March 23, 1988.

Hunt was an employee of Hi-Tech and his duties included unloading the incoming boxcars. When the boxcar arrived at the Hi-Tech plant, the seal was still intact. The boxcar appeared normal to Hunt, and it was not until he broke the seal, opened the door, and began to unload the boxcar that he noticed anything was wrong. The coils of copper rod had shifted during transit so that the weight of the coils was resting on the cross-braces. Ordinarily, during unloading, the cross-braces are removed by hand or with a crowbar. However, Hunt was not able to remove the cross-braces in the normal manner due to the weight of the coils, and so he attempted to pull the braces free with the help of a chain. Hunt hooked one end of the chain to a forklift and the other end to one of the cross-braces. Hunt was injured when the chain broke free under pressure and struck him in the head.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275

(1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Rule 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

In this action, the plaintiffs have alleged that Southern Pacific negligently supervised the loading of the boxcar, negligently inspected the boxcar after it had been loaded, and negligently failed to determine the dangerous condition of the load

it was transporting. The second and third claims are virtually indistinguishable and both involve the carrier's duty to make a reasonable inspection. From the evidence presented, including the deposition testimony of Hunt, it is clear that the boxcar exhibited no noticeable defects from a reasonable inspection of the outside of the car. Hunt did not observe anything out of the ordinary in the condition of the boxcar or the load until breaking the seal and looking inside. It was only after entering the boxcar that he noticed that the load had shifted so as to create a problem in unloading the car. The law is well-settled that a carrier has a duty to make a reasonable inspection of a boxcar, but said duty falls short of breaking the seal and entering the car once it has been loaded and sealed. Casella v. Norfolk & W. Ry., 381 F.2d 473, 476 (4th Cir. 1967) (railroad's duty to employees of consignee is limited to correction of defects observable upon a reasonable inspection of the exterior); Blytheville Cotton Oil Co. v. Kurn, 155 F.2d 467, 470 (6th Cir. 1946) (when fully loaded car is delivered to railroad, railroad is only responsible for defects covered by visual inspection and is not responsible for imperfect packing); Smith v. Louisville & Nashville R.R., 267 F. Supp. 716, 718 (S.D. Ohio 1966) (carrier who receives car loaded and sealed is required to give it reasonable external inspection, which does not include breaking the seal and checking inside to see how car loaded by someone else) Butler v. Norfolk S. Ry., 140 F. Supp. 601, 605

(E.D.N.C. 1956) (duty of carrier that took boxcar sealed from consignor is to give reasonable inspection, which does not entail breaking the seal to see how consignor loaded it). The plaintiffs have presented no evidence to support their contention that Southern Pacific breached its duty to make a reasonable inspection or negligently failed to determine the condition of the load.

The remaining allegation of negligence against Southern Pacific concerns its involvement in supervising the loading of the subject boxcar. There is no evidence that Southern Pacific directly supervised the loading of this particular boxcar. No Southern Pacific representative was present the day the boxcar was loaded. The plaintiffs have alleged that Southern Pacific instructed Phelps Dodge in general as to the appropriate methods for loading its boxcars. However, even assuming that the plaintiffs can assert a claim by showing that Southern Pacific directed the manner in which Phelps Dodge loaded boxcars, the plaintiffs have not submitted any admissible evidence that Southern Pacific instructed Phelps Dodge at any time prior to the date of Hunt's injury.

The plaintiffs claim that the depositions of Alonzo Loya, Robert Nelson, Guillermo Alvarez and Jesus Pas, as well as the interrogatory answers of Phelps Dodge support their contention that Southern Pacific governed the manner in which Phelps Dodge loaded boxcars. However, the interrogatory answers of Phelps Dodge only

provide evidence that Southern Pacific instructed Phelps Dodge in 1989 as to how to employ pallets in loading copper coils onto boxcars. There is nothing stated in the interrogatory answers to indicate that Southern Pacific was involved in directing Phelps Dodge's manner of loading prior to the date of Hunt's injuries. Likewise, the depositions of Loya and Nelson only support the fact that Southern Pacific participated in pallet-load instruction in 1989. Neither Loya nor Nelson had any knowledge as to Southern Pacific's alleged involvement prior to the date of Hunt's injuries.

Both Alvarez and Pas, employees of Phelps Dodge whose duties included loading boxcars, testified that Southern Pacific directed Phelps Dodge to change from a method of loading sixteen coils supported by eight braces to one consisting of eight coils supported by four braces followed by another set of eight coils and four braces. Neither Alvarez nor Pas could remember with any specificity the time frame in which this instruction allegedly occurred, but both indicated that the change took place prior to Hunt's injuries. However, neither individual has any first-hand knowledge of Southern Pacific's involvement. Neither Alvarez nor Pas were directly instructed by Southern Pacific as to the appropriate manner in which to load a boxcar, nor did either one hear or observe Southern Pacific directing anyone else as to the proper method of loading boxcars. Their testimony as to Southern Pacific's involvement is that a representative of Southern Pacific

would come out to Phelps Dodge, meet with a supervisor, and then observe while the supervisor instructed the employees on how to load the boxcars. The plaintiffs have failed to produce testimony from any supervisor as to the nature of any meeting with Southern Pacific representatives prior to the date of Hunt's injuries. Without first-hand knowledge, the testimony of Alvarez and Pas is inadmissible and cannot be relied upon to defeat a motion for summary judgment. Fed. R. Civ. P. 56; See Beijing Metals & Minerals Import/Export Corp. v. American Business Ctr., Inc., 993 F.2d 1178, 1182 (5th Cir. 1993) (nonmoving party must come forward with admissible evidence to defeat motion for summary judgment); Howell Hydrocarbons, Inc. v. Adams, 897 F.2d 183, 192 (5th Cir. 1990) (inadmissible hearsay cannot be used to defeat summary judgment). Without any testimony from anyone with first-hand knowledge that Southern Pacific instructed Phelps Dodge as to the proper method of loading a boxcar, the plaintiff's allegation of negligent supervision cannot be maintained.

There is some question as to whether or not the subject boxcar was mishandled during transportation from El Paso to Starkville so as to cause the load to shift and jam the braces. Some of the Hi-Tech employees testified that the boxcar appeared to have been "humped" -- railroad terminology for a car that has been mishandled. However, the plaintiffs have not alleged in their complaint that Southern Pacific mishandled the boxcar.

Furthermore, the plaintiffs have produced no evidence that Southern Pacific, in particular, was guilty of mishandling the boxcar. Therefore, any possible claim against Southern Pacific for mishandling during the transportation of the boxcar must fail.

CONCLUSION

For the foregoing reasons, the court finds that Southern Pacific's motion for summary judgment should be granted.

An order will issue accordingly.

THIS, the _____ day of June, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE